

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**EX PARTE PETITION FOR APPROVAL OF THE REHABILITATOR'S PLAN TO
ENTER INTO A REINSURANCE AND ASSUMPTION AGREEMENT WITH
US HEALTH AND LIFE INSURANCE COMPANY
RELATIVE TO AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY'S
MICHIGAN AND INDIANA SMALL GROUP HEALTH INSURANCE POLICIES**

Ken Ross, Commissioner of the Michigan Office of Financial and Insurance Regulation,
as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by
and through his attorneys, Michael A. Cox, Attorney General, and Christopher L. Kerr and
Allison M. Dietz, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8114(4)
to approve the Rehabilitator's plan to enter into a reinsurance and assumption agreement with US

Health and Life Insurance Company ("US Health") relative to American Community's Michigan and Indiana small group health insurance policies. In support of this Ex Parte Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision."¹

3. The Rehabilitation Order further provides that "[p]ursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize American Community, and is empowered to pursue all avenues of reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services."²

4. The Rehabilitation Order additionally provides that "[p]ursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, he shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan."³

¹ Rehabilitation Order, p 4, ¶ 3.

² Rehabilitation Order, p 6, ¶ 10.

³ Rehabilitation Order, p 6, ¶ 11.

5. On April 26, 2010, the Court entered an Ex Parte Order approving the Rehabilitator's compensation of Cain Brothers as the exclusive financial advisor to the Rehabilitator.

6. In its role as exclusive financial advisor, Cain Brothers has marketed and solicited offers to purchase various "blocks" or segments of American Community's insurance business. That process resulted in the negotiation of a Reinsurance and Assumption Agreement ("Reinsurance Agreement") between American Community and US Health relative to American Community's Michigan and Indiana small group health insurance policies. The Reinsurance Agreement will allow US Health to first reinsure and eventually assume the entirety of American Community's Michigan and Indiana small group health insurance business existing as of November 1, 2010. A copy of the executed Reinsurance Agreement is attached as Exhibit A.

7. US Health is a Michigan-domiciled life and health insurance company with a successful record in the group health and life insurance marketplace. It was formed in 1992, re-domiciled to Michigan in 1996, and is licensed in 19 states and the District of Columbia. The company is part of a Michigan-based holding company with a Michigan-domiciled third party administrator as the other major operating company. US Health markets and administers group health and life products, as well as group dental products. The company's Risk Based Capital has ranged from 545% to 845% during the past five years, which is an indicator of the company's profitability and financial strength.

8. Based on US Health's experience in the industry, solid financial condition, and other considerations, the Rehabilitator has determined that entering into the Reinsurance Agreement with US Health is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to American Community's creditors, policyholders, and the public.

9. Consistent with the Rehabilitation Order, the Rehabilitator has determined that the Reinsurance Agreement will also maintain to the greatest extent possible a continuity of services for American Community's Michigan and Indiana small group health insurance policyholders.

10. Specifically, effective November 1, 2010 and going forward, the Reinsurance Agreement will transfer all underwriting risk associated with claims against American Community's Michigan and Indiana small group health insurance policies to US Health.⁴ On or before May 19, 2011, US Health will take over administration of these policies.⁵ As soon as reasonably possible, US Health will also assume the American Community policies, eventually transitioning American Community's Michigan and Indiana small group health insurance policyholders into US Health policies.⁶ Once this process is completed, American Community will have completely transferred all administration and all underwriting risk associated with its Michigan and Indiana small group health insurance business to US Health. At the same time, the majority of American Community's policyholders should experience a smooth transition to a reputable replacement insurer.

11. The Reinsurance Agreement will also bring funds into the American Community rehabilitation estate for the benefit of the company's creditors. Pursuant to the Reinsurance Agreement, US Health will pay American Community an administrative fee and an expense allowance while American Community continues to administer the policies.⁷ In addition, during the two-year period from November 1, 2010 through October 31, 2012, US Health will pay American Community a profit-sharing commission equal to 33% of earned premiums (net of any

⁴ Exhibit A, Section 2.A.

⁵ Exhibit A, Section 3.B.

⁶ Exhibit A, Section 5.

⁷ Exhibit A, Sections 7 and 8.

reinsurance premium paid) to the extent that the loss ratio of the policies is less than 80% [(80% - Loss Ratio) x Premiums x 33%].⁸

14. Cain Brothers actively marketed and solicited offers to purchase American Community's Michigan and Indiana small group health insurance business, but US Health was the only company that expressed an interest in acquiring this business.

15. Time is of the essence in securing this Court's approval of the Reinsurance

Agreement, which has a November 1, 2010 effective date and assumes prompt commencement in order to preserve the policies in force and begin the transitioning process. Consequently, the Rehabilitator requests this Court to waive any hearing on this Petition and instead approve the

Rehabilitator's plan to enter into the Reinsurance Agreement on an ex parte basis. Such approval is expressly allowed by the permissive language in MCL 500.8114(4), which provides that

"[u]pon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified."⁹

16. Similarly, providing personalized notice of this Ex Parte Petition and any resulting

Order to all parties that have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Community's

rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate," and the

⁸ Exhibit A, Section 9.

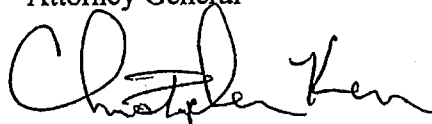
⁹ MCL 500.8114(4)(emphasis added).

subsection "American Community." Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to approve the Rehabilitator's plan to enter into the attached Reinsurance Agreement with US Health relative to all American Community Michigan and Indiana small group health insurance policies in force as of November 1, 2010. Further, the Rehabilitator requests the Court to waive any hearing on this petition and to approve it on an ex parte basis. Finally, the Rehabilitator requests this Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted

Michael A. Cox
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", is written over the typed name.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: December 2, 2010

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REINSURANCE AND ASSUMPTION AGREEMENT

This Agreement is made and entered into by and between US Health and Life Insurance Company, a Michigan insurance company ("USHL"), and American Community Mutual Insurance Company, a Michigan insurance company ("American"). USHL and American are referred to from time to time in this Agreement individually as a "Party" and together as the "Parties."

In consideration of the mutual terms and conditions contained herein, the Parties hereby agree as follows:

1. Definitions

- A. "Benefits" means and includes only benefits payable under Reinsured Policies.
- B. "Closing Date" is the date on which the Agreement is executed by the Parties.
- C. "Effective Date" means November 1, 2010, regardless of the date when this Agreement was executed by the Parties.
- D. "Reinsured Policies" means only those policies, certificates and contracts of insurance ceded and reinsured under this Agreement as more particularly described in Exhibit A-1.
- E. "In-Force" means Reinsured Policies in effect and providing coverage as of the Effective Date. A policy is deemed In-Force if the premium for a Reinsured Policy has been paid to or beyond the Effective Date or if it shall be paid to or beyond the Effective Date within the grace period permitted in the policy. If, on the Effective Date, the premium on a Reinsured Policy is unpaid beyond such grace period, it will be deemed not to be In-Force, except that if the holder thereof pays the requisite premium and complies with American's usual and customary reinstatement requirements, the Reinsured Policy will be deemed to be In-Force on the Effective Date.
- F. "Premiums Earned" means gross premiums earned on the Reinsured Policies.

2. Reinsurance Coverage

- A. As of the Effective Date and continuing through the day immediately preceding the Assumption Date (the "Reinsurance Period"), pursuant to the terms and conditions of this Agreement, American will cede 100% of the Reinsured Policies to USHL and USHL will reinsure each Reinsured Policy in exchange for all Premiums Earned during the Reinsurance Period on the Reinsured Policies and be responsible for Benefits and all other liabilities and risks arising from the Reinsured Policies except as may be provided for else where in this Agreement.

B. As of the Assumption Date, American will convey, transfer and assign to USHL all of the Reinsured Policies along with the Premiums Earned and USHL will assume all Benefits incurred on or after the Assumption Date related to such policies together with all other liabilities and risks arising on or after the Assumption Date for such policies.

C. Notwithstanding anything to the contrary in this Agreement, American does not cede, and USHL shall not be liable for any Benefits of Reinsured Policies or other liabilities, such as agent commissions, premium taxes, insurance department assessments and other fees and expenses, that were incurred or earned prior to the Effective Date of this Agreement.

D. American will indemnify USHL and hold USHL harmless for any obligations of, or claims against USHL with respect to the Reinsured Policies for actions taken or not taken by American prior to the Effective Date.

E. All references to currency and all monetary transactions shall be in U.S. Dollars.

F. All premiums received by American on the Reinsured Policies during any month after the Effective Date shall be paid to USHL on or before the 20th day of the following month. The premium payments to USHL may be reduced by (1) any payments made by American for Benefits incurred on or after the Effective Date, (2) the Administrative Fee to be paid to American by USHL for services during the Administration Period, (3) American's reinsurance premium if the Parties agree to have such reinsurance cover the Business (4) during the Administration Period before the Assumption Date, the Expense Allowance for expenses paid by American for agents' commissions, premium taxes, insurance department assessments and other related expenses generated from the Reinsured Policies, and (5) during the Administration Period on and after the Assumption Date, amounts paid by American at the direction of USHL for agents' commissions, premium taxes, insurance department assessments and other related expenses generated from the Reinsured Policies.

Administration

A. Beginning on the Effective Date and continuing through the day immediately preceding the date that USHL assumes Administration responsibilities over the Reinsured Policies (the "Administration Period"), American will continue to provide administration services for the Reinsured Policies, which will include premium billing and collection, and service fees, claims payment, policyholder inquiries and all other policyholder service activities ("Administration"). During the Administration Period and prior to the Assumption Date, American shall be entitled to an Expense Allowance as reimbursement for American paying all agents' commissions, premium taxes and any insurance department assessments, which American is required to pay relating to the Reinsured Policies. During the Administration Period and on and after the Assumption Date, American shall be entitled to reimbursement for amounts paid by American at the direction of USHL for agents' commissions, premium taxes and other related expenses generated from the Reinsured Policies.

- A. During the Administration Period, USHL agrees to accept and be bound by and hold American harmless for any decision regarding payment of Benefits on Reinsured Policies, except in the case of American making such decisions in violation of this Agreement or in a manner that is grossly negligent or in a manner that constitutes intentional misconduct. During the Administration Period, American agrees not to materially change, alter or modify its claims paying or administrative practices with respect to the Reinsured Policies without the prior written consent of USHL and will conduct such practices in a commercially reasonable manner consistent with American's past practices. American agrees to deliver to USHL copies of proof of loss documentation no less than 5 days in advance of paying any Benefits where the payment exceeds \$20,000 and consult with USHL before making such payment, provided that USHL shall be entitled to periodically review payments of Benefits of lesser amounts at the offices of American and request advance review of payments exceeding \$10,000 if such review indicates a review of such lesser amounts is commercially reasonable.
- B. American shall Administer the Reinsured Policies until the earlier of: i) six months after the Closing Date or ii) until USHL begins Administration of the Reinsured Policies which may occur separately by state. Thereafter, USHL shall be responsible for the Administration of the Reinsured Policies; and shall be responsible and pay all agent commissions, premium taxes, insurance department assessments and other related expenses generated by the Reinsured Policies to the extent USHL has not paid American an Expense Allowance or permitted American to reimburse itself from Premiums for any such obligations. American will continue to administer and pay all Benefits incurred prior to the Effective Date.
- D. American shall provide USHL with all records, electronic and otherwise, necessary for the Administration of the Reinsured Policies no later than 30 days before the date on which USHL assumes Administration responsibilities over the Reinsured Policies.

4. Accounting, Reports & Settlements

- A. During the Administration Period, American shall provide to USHL on or before the 20th day of each month, containing for the calendar month just ended:
- (1) a report in the form set forth in Exhibit D, the month's premiums, and Benefits paid on behalf of USHL, together with supporting detail information; and
- (2) for months occurring before the Assumption Date, supporting detail information for the Administrative Fee, reinsurance premiums if the Parties agree to have such reinsurance cover the Business and Expense Allowance charged by American for such month; and
- (3) for the months following the Assumption Date, supporting detail information for amounts paid by American for agents' commissions, Administrative Fees, ppo fees and other related expenses generated from the Reinsured Policies.

- B. Each Party agrees to provide the other Party with any other information relating to the Reinsured Policies or this Agreement reasonably required by the other Party during the term of this Agreement.
- C. To the extent that Premiums Earned and any related expenses for the Reinsured Policies relating to the Administration Period require adjustments due to uncollected premiums, cancelled policies or other reason, such adjustments will be provided to the other Party and paid.
- D. Each Party shall have the right upon fifteen (15) business days' written notice to the other Party, to audit the other Party to confirm the other Party's performance of its obligations under this Agreement. The audit must be conducted during the audited Party's normal business hours. The Party performing the audit shall do so at its' own expense and at no charge to the Party being audited. The Party performing the audit shall provide the other Party with a copy of its audit report.

5. USHL To Assume The Reinsured Policies

- A. As soon as reasonably possible after the Assumption Date, USHL shall issue assumption certificates similar to Exhibit C to the holders of the Reinsured Policies that:
 - 1. transfer American's insurance obligations and the risks of the Reinsured Policies to USHL with the result that USHL becomes directly liable to the holders of the Reinsured Policies as the Insurer; and
 - 2. extinguishes American's insurance obligations and risks under the Reinsured Policies other than those related to Benefits incurred prior to the Effective Date.
- B. American and USHL will cooperate with each other to use the best of their efforts to obtain regulatory and/or court authority for USHL to assume the Reinsured Policies as soon as practicable.
- C. The effective date of the assumption of the Reinsured Policies ("Assumption Date") for each state shall be the first of the month following approval of such state, or as required by law or regulation.

6. Extra-Contractual Damages

- A. USHL agrees to indemnify American for claims for actions on the part of USHL that are adjudged by a competent court to constitute bad faith, or for punitive and any other extra-contractual damages or liability relating to any claims for Benefits incurred on or after November 1, 2010, relating to Reinsured Policies but only to the extent such actions were not due to actions of American taken in contravention of directions by USHL or in

violation of this Agreement or in a manner that is grossly negligent or in a manner that constitutes intentional misconduct.

- B. American agrees to indemnify USHL for actions on the part of American that are adjudged by a competent court to constitute bad faith, or for punitive and any other extra-contractual damages or liability awarded against USHL because of such actions, relating to any claims for Benefits relating to Reinsured Policies.

7. Payment of Administrative Fee and Reinsurance Premium

- A. USHL shall owe a fee to American for each month during the Administration Period equal to \$18 per employee who is active on the first day of such month for American's Administration of Reinsured Policies (the "Administrative Fee").
- B. The Administrative Fee for each month shall be paid as set out in Section 2. F. and 3. A.
- C. The Reinsurance Fee for each month shall be as set out in Exhibit D, if the Parties agree to have such reinsurance cover the Business.

8. Payment of Expense Allowance and Expenses

- A. USHL shall owe American an Expense Allowance for that part of the Administration Period that occurs before the Assumption Date. The Expense Allowance shall be a fixed rate of 11.0% of Premiums Earned on Reinsured Policies each month to cover American's expenditures for agent commissions, premium taxes, insurance department assessments and other related expenses generated by the Reinsured Policies.
- B. On and after the Assumption Date, USHL shall be responsible for any applicable agent commissions, premium taxes, insurance department assessments and other related expenses generated by the Reinsured Policies.
- C. Should the Assumption Date occur before the Administration Period terminates, American shall pay commissions in accordance with instructions from USHL, and be reimbursed for the same.
- D. The Expense Allowance and other amounts due for each month shall be paid as set out in Section 2. F. and 3. A.

9. Payment of Profit-Sharing Commission

- A. USHL shall pay American a profit-sharing commission equal to 33% of the amount by which the Loss Ratio of the Reinsured Policies is less than 80% for the two-year period of November 1, 2010, through October 31, 2012. A Loss Ratio of the Reinsured Policies of 80% or more does not create a liability for either Party.

A. Calculation of profit-sharing commission under Section 9 shall include Premiums Earned both for Reinsured Policies that are renewed and Reinsured Policies that are converted to USHL policies.

10. Renewals, Conversions and Other Policies

I. Periodic reporting on the performance of the Reinsured Policies shall be provided to American as mutually agreed upon between the Parties; provided, however, that the information contained in such reports is not binding for purposes of calculating the profit-sharing commission.

H. If the Parties cannot reach agreement on the profit-sharing commission or the amount of the remaining claim reserve needed for the Loss Ratio calculation, the Parties shall select a nationally-recognized actuarial firm (after excluding any actuarial firms that provide services to either Party), submit to such firm their respective calculations of the Loss Ratio and any supporting documentation, and request that the firm determine the Loss Ratio. The determination by the actuarial firm selected shall be set forth in writing and shall be conclusive and binding upon the Parties. The Parties shall equally share responsibility for the fees and expenses of the actuarial firm.

G. The profit-sharing commission shall be calculated by December 31, 2012, based on performance of the Reinsured Policies from November 1, 2010, through October 31, 2012. The profit-sharing commission shall be paid by January 15, 2013.

F. For purposes of calculation of the profit-sharing commission, Premiums and Benefits are not to be adjusted for reinsurance USHL may have with other entities.

E. For purposes of this Section 9 only, "Gross Benefits" means Benefits incurred on the Reinsured Policies including Benefits paid, Benefits payable and Benefits incurred but not reported, less any amounts received from American's reinsurers if the Parties agree to have such reinsurance cover the Business for the two-year period of November 1, 2010, through October 31, 2012.

D. For purposes of Section 9 only, "Premiums" means Premiums Earned on the Reinsured Policies net of any reinsurance premium paid by American if the Parties agree to have such reinsurance cover the Business for the two-year period of November 1, 2010, through October 31, 2012.

C. For purposes of this Section 9 only, "Loss Ratio" means the ratio of Gross Benefits to Premiums Earned, expressed as a percentage.

$$(80\% \text{-Loss Ratio}) \times \text{Premiums} \times 33\%$$

B. The profit-sharing commission shall be calculated as follows:

I. conflict with or result in a breach of any provision of the Articles of Association or bylaws of American, or result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, lien, bond, mortgage, indenture, license, lease, agreement, consent order, or other instrument or obligation to which American is a Party or by which it may be bound;

C. Validity, No Violation. This Agreement is a valid and binding obligation of American, enforceable against it in accordance with its terms and conditions. Neither the execution and delivery of this Agreement, nor American's compliance with any of the provisions of this Agreement, will:

B. Authority. American has all requisite power and authority necessary to execute this Agreement and to consummate the transactions contemplated by this Agreement and perform its obligations hereunder. The execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been approved by all necessary corporate action of American.

A. Organization and Existence. American is validly existing and in good standing under the corporate and insurance laws of the jurisdiction of its formation.

American represents and warrants to USHL that:

13. Representations and Warranties of American

B. In the event American becomes insolvent this Agreement shall remain in effect and shall not provide a basis for either Party to terminate the Agreement.

III. by either Party if the other Party breaches a material term of the Agreement and such breach is not substantially cured by the breaching Party within 60 days of the receipt of written notification from the non-breaching Party.

II. when all Reinsured Policies have terminated and all benefits payable on Reinsured Policies have been satisfied; or

I. upon mutual written consent of the Parties;

A. This Agreement may be terminated only:

12. Termination

A. Included on Exhibit A-2 is a complete list of the names and addresses of the agents who sold the Reinsured Policies.

11. Agents

B. No Administrative Fee shall be owed by USHL to American on any Reinsured Policy that is converted to a USHL policy unless USHL requires American to administer such policy.

- II. violate any judgment, order, writ, injunction, or decree of any court, administrative agency, or governmental body applicable to American or to any of its properties or assets; or
 - III. cause, or give any person grounds to cause (with or without notice, the passage of time, or both), the maturity of any liability of American to be accelerated or increased.
 - D. Health Insurance Portability and Accountability Act. American is cognizant of the requirements of the Health Insurance Portability and Accountability Act ("HIPAA"), including related or similar Federal and state laws, regulations, rules, and requirements, and agrees that it shall comply with all such laws, rules, regulations and requirements in the performance of its obligations under this Agreement, as provided more specifically in Exhibit 2 hereto, the Privacy Agreement.
 - E. Survival of Representations and Warranties. The respective representations and warranties of American contained in this Agreement shall survive the Closing until all of the liabilities related to or arising from the Reinsured Policies have been discharged or have otherwise expired.
 - F. Reinsured Policies, Forms and Premium Rates. The Reinsured Policies have been issued on forms filed with and approved by the respective state of issue as necessary and the premiums being charged for the Reinsured Policies have been filed with and approved as necessary and are within the range of rates permitted by the respective states.
- 14. Representations and Warranties of USHL**
- USHL hereby represents and warrants to American that:
- A. Organization and Existence. USHL is a Michigan-domiciled company duly incorporated, validly existing, and in good standing under the corporate and insurance laws of the State of Michigan.
 - B. Authority. USHL has all requisite corporate power and authority to carry on its business as it is now being conducted, and to own, lease, and operate its properties. The execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been approved by all necessary corporate action of USHL.
 - C. Qualification and Power. USHL is duly qualified and in good standing to do business in the State of Indiana and the State of Michigan.
 - D. Validity: No Violation. This Agreement is a valid and binding obligation of USHL, enforceable against it in accordance with its terms and conditions. Neither the execution and delivery of this Agreement, nor Reinsurer's compliance with any of the provisions of this Agreement, will:
 - I. conflict with or result in a breach of any provision of the Articles of incorporation or bylaws of USHL, or result in a default (or give rise to any

right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, lien, bond, mortgage, indenture, license, lease, agreement, consent order, or other instrument or obligation to which USHL is a Party or by which it may be bound;

- ii. violate any judgment, order, writ, injunction, or decree of any court, administrative agency, or governmental body applicable to USHL or to any of its properties or assets; or
- iii. cause or give any person grounds to cause (with or without notice, the passage of time, or both), the maturity of any liability of USHL to be accelerated or increased.

- E. Health Insurance Portability and Accountability Act. USHL is cognizant of the requirements of the Health Insurance Portability and Accountability Act ("HIPAA"), including related or similar Federal and state laws, regulations, rules and requirements, and agrees that it shall comply with all such laws, rules, regulations and requirements in the performance of its obligations under this Agreement, as provided more specifically in the Privacy Agreement in Exhibit B.
- F. Survival of Representations and Warranties. The representations and warranties of USHL contained in this Agreement shall survive the Closing until all of the liabilities reinsured and assumed have been discharged or have otherwise expired.

15. General Provisions

- A. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, superseding all prior oral and written agreements. This Agreement may only be amended in writing, signed by both Parties.
- B. This Agreement may not be assigned by either Party without the prior written consent of the other Party. This Agreement is binding upon, and shall inure to the benefit of, the successors and permitted assigns of the Parties.
- C. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.
- D. Any payments due to either Party may be offset against payments to be received from the other Party.
- E. Each Party shall pay its own expenses in connection with the transactions contemplated hereby, including expenses related to their respective counsel and accountants; provided, however, that (1) any expenses payable to a government authority, other than a Court, related to necessary regulatory approval required for this Agreement to take effect shall be the responsibility of, and at the expense of USHL and (2) any expenses in connection with obtaining the approval of the Ingham County Circuit Court, State of Michigan shall be the responsibility of American.

- F. As American is in rehabilitation, the Parties acknowledge that this Agreement is contingent upon receipt of approval of the Ingham County Circuit Court, State of Michigan.
- G. Each of the Parties shall maintain the confidentiality of all information related to the Reinsured Policies and all other information deemed confidential by the Party providing it in connection with this Agreement pursuant to the Privacy Agreement.
- H. No forbearance on the part of either Party to insist upon compliance by the other Party with the terms of this Agreement shall be construed as, or constitute, a waiver of any of the terms of this Agreement.
- I. To the extent that this Agreement may be in conflict with any applicable law or regulation, this Agreement will be amended, at the mutual agreement of both Parties, to the extent possible, to comply with such law and regulation. If any term or provision of this Agreement will be found by a court of competent jurisdiction to be illegal or otherwise unenforceable, the same will not invalidate the whole of this Agreement, but such term or provision will be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly preserving to the fullest permissible extent the intent and agreements of the Parties set forth herein.
- J. This Agreement shall be governed in accordance with Michigan law, and any litigation shall be venued in Ingham County, Michigan.
- K. All notices hereunder shall either be personally delivered, sent by overnight express mail, or sent certified mail, postage prepaid, at the following addresses:

To American:

James Gerber, Deputy Rehabilitator
American Community Mutual Insurance Company
39201 Seven Mile Road
Livonia, MI 48152

To USHL:

Richard Sorensen, Treasurer & CFO
US Health and Life Insurance Company
8220 Irving Road
Sterling Heights, MI 48312

James Ford, General Counsel
US Health and Life Insurance Company
8220 Irving Road
Sterling Heights, MI 48312

L. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

M. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

N. Each Party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement, or the transactions contemplated by this Agreement. Each Party certifies and acknowledges that (a) no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, (b) each Party understands and has considered the implications of this waiver, (c) each Party makes this waiver voluntarily, and (d) each Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 15.

O. This Agreement may be executed in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused the execution of this Agreement as of the day and year first above written.

US Health and Life Insurance Company
By: *Mark A. Jensen*
Its: *CEO / Treasurer*
Dated: *11/18/10*

American Community Mutual Insurance Company
By: *James C. Walker*
Its: *Deputy Secretary*
Dated: *11/19/10*

EXHIBIT A-1

Business Subject To Reinsurance

The business subject to reinsurance is American's entire book of policies, certificates and contracts of small group health insurance in Michigan and Indiana, which shall include the following pieces of business:

IN Small Group Health Forms
ALLGRP-CONT and ALLGRP-CERT
APERII-CERT-IN
AMT-CERT
NGHSA-CERT
SGRP09-CERT-IN

MI Small Group Health Forms
ALLGRP-CONT and ALLGRP-CERT
APERII-CERT
AMT-CERT
SGRP09-CERT
NGHSA-CERT
TIER-CERT
SGR-CERT

EXHIBIT A-2

Agents, Agencies, Brokers for the Reinsured Policies

[This information is redacted from the court filing because it is proprietary and/or confidential in nature and could be used by competitors]

EXHIBIT B

Privacy Agreement

This Privacy Agreement ("Agreement"), effective November 1, 2010 ("Effective Date"), is entered into by and between US Health and Life Insurance Company hereinafter referred to as ("Business Associate") and American Community Mutual Insurance Company hereinafter referred to as ("ACMIC"). Collectively ACMIC and Business Associate shall be known as the "Parties".

WHEREAS, the Parties have a business relationship in which the Business Associate will use and/or disclose Protected Health Information ("PHI") in its performance of certain services arising from that relationship ("Services");

WHEREAS, both Parties are committed to complying with all laws that regulate the use and disclosure of PHI, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and applicable state laws;

WHEREAS, both Parties agree that this Agreement shall amend any type of service agreement or other type of contractual relationship between the Parties to which this Agreement is attached ("Business Contract");

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which PHI that is provided by, or created or received by, the Business Associate from or on behalf of ACMIC will be handled between the Business Associate and ACMIC and with third Parties during the term of their Agreement and after its termination.

NOW, THEREFORE, the Parties agrees as follows:

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. Business Associate provides certain Services that involve the use and/or disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Business Contract. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only,

- (i) to its employees, subcontractors and agents, in accordance with Section 2.1(e),
- (ii) as directed by ACMIC, or
- (iii) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 1.2 below.

1.2 Business Activities of the Business Associate. Except as otherwise limited in this Agreement:

- (a) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- (b) Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required or permitted by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required or permitted by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

1.3 Additional Activities of Business Associate. In addition to using the PHI to perform the Services set forth in Section 1.1 of this Agreement, Business Associate may de-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that ACMIC maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from the Business Associate. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

- 2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:
- (a) not use or further disclose PHI other than as permitted or required by this Agreement or as required or permitted by law.
 - (b) to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
 - (c) to mitigate, to the extent practicable, any harmful affect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
 - (d) to report to the designated Privacy Officer of ACMIC, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware within five (5) days of the Business Associate's discovery of such unauthorized use and/or disclosure.
 - (e) to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of ACMIC agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
 - (f) to provide access, at the request of ACMIC and in the time and manner designated by ACMIC, to PHI in a Designated Record Set to ACMIC in order to meet the requirements under 45 CFR § 164.524.
 - (g) to make any amendment(s) to PHI in a Designated Record Set that ACMIC directs or agrees to pursuant to 45 CFR § 164.526 at the request

of ACMIC or an Individual, and in the time and manner designated by ACMIC.

- (h) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of ACMIC available to the Secretary of the Department of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining ACMIC's compliance with the Privacy Rule.
- (i) to document such disclosures of PHI and information related to such disclosures as would be required for ACMIC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- (j) upon prior written request, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to ACMIC for purposes of enabling ACMIC to determine the Business Associate's compliance with the terms of this Agreement.
- (k) to disclose to its subcontractors, agents or other third Parties, and request from ACMIC, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

2.2 Responsibilities of ACMIC. With regard to the use and/or disclosure of PHI by the Business Associate, ACMIC hereby agrees:

- (a) to inform the Business Associate of any changes in the form of notice of privacy practices (the "Notice") that ACMIC provides to individuals pursuant to 45 C.F.R. §164.520, and provide the Business Associate a copy of the Notice currently in use.
- (b) To provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) to inform the Business Associate of any opt-outs exercised by any individual from marketing activities of ACMIC pursuant to 45 C.F.R. § 164.514(e).
- (d) to notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of ACMIC under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by ACMIC.
- (e) that Business Associate may make any use and/or disclosure of PHI permitted under 45 C.F.R. § 164.512 except uses or disclosure for research are not permitted without prior approval by ACMIC.

3. TERMS AND TERMINATION

- 3.1 **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 3. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination.
- 3.2 **Termination by ACMIC.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), ACMIC may immediately terminate this Agreement and the Business Contract, and any related agreements, if ACMIC makes the determination that the Business Associate has breached a material term of this Agreement and Business Associate either fails to cure the breach or a cure is not possible. ACMIC shall: (i) provide the Business Associate with written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within five (5) days of receipt of the written notice, Business Associate must cure said breach to the satisfaction of ACMIC within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement and the Business Contract.
- 3.3 **Effect of Termination.** Upon the event of termination pursuant to this Section 3, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(i) if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify ACMIC in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to ACMIC and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

4. MISCELLANEOUS

- 4.1 **Business Associate.** For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a covered entity under the Privacy Regulation,

that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.105, as the Business Associate for purposes of this Agreement.

- 4.2 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- 4.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for ACMIC to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191 and any other applicable law.
- 4.4 Survival. The respective rights and obligations of Business Associate under Section 4 of this Agreement shall survive the termination of this Agreement.
- 4.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits ACMIC to comply with the Privacy Rule and the Security Rule.
- 4.6 Security Rule. The "Security Rule" means the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C. Commencing on the effective date of the Security Rule, any PHI that is transmitted via electronic media or maintained in electronic media by Business Associate will be protected under standards and specifications no less stringent than those described in the Security Rule. In accordance with the Security Rule, the Business Associate will: (i) implement administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of ACMIC (ii) ensure that any agent (including a subcontractor) to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; (iii) report to ACMIC any security incident of which it becomes aware; and (iv) authorize termination of any Business Contract by ACMIC if it determines that the Business Associate violated a material term of this Agreement.

5. DEFINITIONS.

ALL CAPITALIZED TERMS USED IN THIS AGREEMENT AND NOT OTHERWISE DEFINED HEREIN, SHALL HAVE THE SAME MEANING AS SET FORTH UNDER THE PRIVACY RULE AND THE SECURITY RULE.

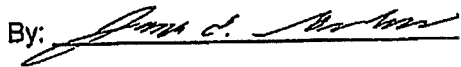
- 5.1 Designated Record Set. "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- 5.2 Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

- 5.3 Privacy Officer. "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised.
- 5.4 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 5.5 Protected Health Information. "PHI" shall have the meaning as set out in its definition at 45 C.F.R. § 160.103, as such provision is currently drafted and as it is subsequently updated, amended or revised, limited to the PHI created or received by Business Associate from or on behalf of ACMIC.
- 5.6 Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- 5.7 Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY

US HEALTH AND LIFE INSURANCE
COMPANY

By: 
Print Name: JAMES E. GEMBER
Print Title: Deputy Rehabilitation
Date: 11/19/10

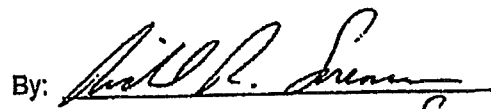
By: 
Print Name: RICHARD R. SORENSON
Print Title: CFO / Treasurer
Date: 11/18/10

EXHIBIT C

CERTIFICATE OF ASSUMPTION

John Doe
111 Any Street
City, State 99999

Re: Policy No(s).

Effective _____, American Community Mutual Insurance Company entered into an Assumption Agreement with US Health and Life Insurance Company, a Michigan corporation ("USHL"). Under this agreement, USHL assumed responsibility for the liabilities of your policy listed above.

The effect of this agreement for you is that USHL is now the insurer of your policy and is responsible for paying all claims due under your policy except claims incurred prior to

Nothing contained in this Certificate of Assumption will vary, alter, waive or extend any of the terms, conditions, agreements or limitations of the policy, other than as specifically stated herein.

Please attach this Certificate of Assumption to your Policy.

US Health and Life Insurance Company

By: _____

Exhibit D - ADMINISTRATION PERIOD PRIOR TO ASSUMPTION DATE

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY
US HEALTH AND LIFE INSURANCE COMPANY
MONTHLY REINSURANCE REPORT*

Activity of Reinsured Policies for the Month Ended November 30, 2010

Premiums Earned	\$xxx,xxx.xx
Less:	
Benefits (Claims paid)	xxx,xxx.xx
Administrative Fee of \$18 per employee per month(# of certificates)	x,xxx.xx
Reinsurance Premium (if the Parties agree to have such reinsurance cover the Business)	x,xxx.xx
Expense Allowance (11% of Earned Premium)	xxxxxx.xx
	<hr/>
	xxx,xxx.xx

Total Due to USHL (Due to American) xxx,xxx.xx

*For Illustration Only

Exhibit D - ADMINISTRATION PERIOD ON AND AFTER ASSUMPTION DATE

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY
US HEALTH AND LIFE INSURANCE COMPANY
MONTHLY REINSURANCE REPORT*

Activity of Reinsured Policies for the Month Ended XXXXXXXX, 20xx

Premiums Earned	\$xxx,xxx.xx
Less:	
Benefits (Claims paid)	xxx,xxx.xx
Administrative Fee of \$18 per employee per month(# of certificates)	x,xxx.xx
Expenses	
agent commissions	x,xxx.xx
ppo fees	x,xxx.xx
other expenses	x,xxx.xx
Total Due to USHL (Due to American)	<u>xx,xxx.xx</u>

*For Illustration Only